

**AMENDMENTS TO THE CLAIMS:**

The following listing of claims will replace all prior versions, and listings, of claims in the application:

Please cancel claims 1-8.

9. (New)

A prime mover control device of a construction machine that includes:

a hydraulic pump driven by a prime mover;

an actuator driven with pressure oil discharged from the hydraulic pump; and

a control valve that controls a flow of the pressure oil from the hydraulic pump to the actuator in response to an operation of a first operating member, comprising:

a first set device that sets a first set rotation speed of the prime mover according to the operation of the first operating member;

a second set device that sets a second set rotation speed of the prime mover according to an operation of a second operating member;

a selection member that selects one of a first mode and a second mode; and

a rotation speed control device that controls a prime mover rotation speed to match with a maximum value between the first set rotation speed and the second set rotation speed when the selection member selects the first mode, and that controls the prime mover rotation speed to match with the second set rotation speed when the selection member selects the second mode.

10. (New)

A prime mover control device of a construction machine that includes:

a hydraulic pump driven by a prime mover;

an actuator driven with pressure oil discharged from the hydraulic pump; and

a control valve that controls a flow of the pressure oil from the hydraulic pump to the actuator in response to an operation of a first operating member, comprising:

a first set device that sets a first set rotation speed of the prime mover according to the operation of the first operating member;

a second set device that sets a second set rotation speed of the prime mover according to an operation of a second operating member;

a selection member that selects one of a first mode and a second mode; and

a rotation speed control device that controls a prime mover rotation speed to match with the first set rotation speed when the selection member selects the first mode, and that controls the prime mover rotation speed to match with the second set rotation speed when the selection member selects the second mode.

11. (New)

A prime mover control device of a construction machine according to claim 9, wherein:

the first operating member is a foot-operated operating member, and the second operating member is a hand-operated operating member.

12. (New)

A prime mover control device of a construction machine according to claim 9, wherein:

the selection member is installed in the vicinity of the second operating member.

13. (New)

A prime mover control device of a construction machine according to claim 9,  
wherein:  
the actuator is a traveling motor.

14. (New)

A prime mover control device of a construction machine according to claim 13,  
further comprising:  
a determination device that determines a traveling state and a work state; wherein:  
when the traveling state is determined with the determination device, the first set  
device sets the first set rotation speed to a larger value compared to a value to be set when the  
work state is determined.

15. (New)

A prime mover control device of a construction machine according to claim 14,  
wherein:  
the determination device comprises a brake detection unit that detects a non-operating  
state of a brake and a neutral detection unit that detects a neutral operation of the first  
operating member, and determines the traveling state when the non-operating state of the  
brake is detected and the neutral operation is not detected.

16. (New)

A wheeled hydraulic excavator, comprising:  
a hydraulic pump driven by a prime mover;

an actuator driven with pressure oil discharged from the hydraulic pump;  
a control valve that controls a flow of the pressure oil from the hydraulic pump to the actuator in response to an operation of a first operating member; and  
a prime mover control device according to claim 9.

17. (New)

A prime mover control device of a construction machine according to claim 10, wherein:

the first operating member is a foot-operated operating member, and the second operating member is a hand-operated operating member.

18. (New)

A prime mover control device of a construction machine according to claim 10, wherein:

the selection member is installed in the vicinity of the second operating member.

19. (New)

A prime mover control device of a construction machine according to claim 10, wherein:

the actuator is a traveling motor.

20. (New)

A prime mover control device of a construction machine according to claim 19, further comprising:

a determination device that determines a traveling state and a work state; wherein:

when the traveling state is determined with the determination device, the first set device sets the first set rotation speed to a larger value compared to a value to be set when the work state is determined.

21. (New)

A prime mover control device of a construction machine according to claim 20, wherein:

the determination device comprises a brake detection unit that detects a non-operating state of a brake and a neutral detection unit that detects a neutral operation of the first operating member, and determines the traveling state when the non-operating state of the brake is detected and the neutral operation is not detected.